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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Jean-Noel THOREL et al.

Group Art Unit: 1617

Application No.: 10/537,816

Examiner: CLAYTORS, D.

Filed: June 7, 2005

Docket No.: 124184

For: CUTANEOUS METABOLIC BIO-ACTIVATOR

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the June 4, 2008 Election of Species Requirement, Applicants provisionally elect as the biomimetic peptide histidine- β -alanyl, with traverse. Claims 1-8 and 17-22 read on the elected species, and at least claim 1 is generic to all species.

The Office Action fails to establish a *prima facie* case that there is a lack of unity of invention among the claimed biomimetic peptides. PCT Rule 13.2 governs the situation involving a single claim that defines alternatives, or so-called "Markush practice." In order to properly require a restriction between members of a Markush group of biomimetic peptides, the Office Action must establish that there is a lack of unity of invention among the recited biomimetic peptides. To do this, the Office Action must show that the biomimetic peptides do not share a common property or a significant structural element that is essential to the common property. *See, e.g.*, ISPE 10.52; MPEP §1850(III)(B). The Office Action fails to show a lack of either requirement. Therefore, the Office Action fails to show any lack of

unity of invention among the biomimetic peptides and, thus, requiring restriction among the biomimetic peptides is clearly improper.

Reconsideration and withdrawal of the Election of Species Requirement are respectfully requested.

Respectfully submitted,



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WPB:HHS

Date: July 7, 2008

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